

Message Text

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PAGE 01 STATE 211503

61

ORIGIN L-03

INFO OCT-01 EUR-25 ISO-00 AID-20 CEA-02 CIAE-00 COME-00

EB-11 EA-11 FRB-03 INR-11 IO-14 NEA-14 NSAE-00 RSC-01

OPIC-12 SP-03 TRSE-00 CIEP-03 LAB-06 SIL-01 SWF-02

OMB-01 CEQ-02 COA-02 DODE-00 EPA-04 NSF-04 NSC-07

PM-07 SCI-06 SS-20 FEA-02 SSO-00 NSCE-00 INRE-00

USIE-00 OIC-04 PRS-01 /203 R

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O R 252052Z SEP 74

FM SECSTATE WASHDC

TO USMISSION OECD PARIS IMMEDIATE

INFO ALL OECD CAPITALS

UNCLAS STATE 211503

E.O. 11652: N/A

TAGS: SENV; OECD

SUBJECT:OECD ACTION PROPOSAL CONCERNING TRANSFRONTIER
POLLUTION

1. FOLLOWING IS FOR GUIDANCE OF MISSION IN HANDLING ACTION
PROPOSAL ON TRANSFRONTIER POLLUTION AT SEPTEMBER 26 EXCOM
MEETING.

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 STATE 211503

2. ENVIRONMENT COMMITTEE REACHED SUBSTANTIAL AGREEMENT

SEPT. 11-12 ON A DRAFT DECLARATION OF PRINCIPLES ON TRANS-FRONTIER POLLUTION. HOWEVER, SPAIN RESERVED ON PRINCIPLES 5 AND 6 (EQUAL RIGHT OF HEARING) AND 8 AND 9 (NOTIFICATION AND CONSULTATION). HERTER ALSO RECENTLY LEARNED IN OTTAWA THAT THE CANADIANS, WHO RELUCTANTLY SUPPORTED ACTION PROPOSAL IN THE ENVIRONMENT COMMITTEE, CONTINUE TO HAVE RESERVATIONS ABOUT IT AND MAY INSIST THAT ITS ADOPTION BE DEFERRED PENDING FURTHER WORK IN ENVIRONMENT COMMITTEE. CANADIANS INDICATED TO HERTER THAT THEY WILL PROBABLY PROPOSE SUBSTITUTE ACTION PROPOSAL ALONG LINES OF U.S. FALL-BACK PROPOSAL PREPARED FOR SEPTEMBER 11-12 MEETING BUT NEVER TABLED.

3. WE CONTINUE TO FEEL THAT POSITIVE ACTION ON THIS SUBJECT ON THE OCCASION OF THE NOVEMBER MINISTERIAL WOULD BE A SIGNIFICANT INDICATOR OF THE ABILITY OF OECD MEMBER COUNTRIES TO WORK COOPERATIVELY IN THE ENVIRONMENT FIELD. ALTHOUGH DECLARATION NOT IDEAL IN ALL RESPECTS FROM U.S. POINT OF VIEW, WE WOULD REGRET SEEING CONSIDERABLE PROGRESS AND MOMENTUM ACHIEVED THUS FAR LOST, PARTICULARLY BEARING IN MIND THE EXTENSIVE AND ENCOURAGING COMPROMISES MADE BY MANY DELEGATIONS TO RESOLVE THEIR DIFFERENCES.

4. ACCORDINGLY, MISSION SHOULD MAKE KNOWN IMPORTANCE WE ATTACH TO AGREEMENT ON PRINCIPLES, IF POSSIBLE PRIOR TO MINISTERIAL. HOWEVER, IF SPANISH AND CANADIANS PERSIST IN THEIR OBJECTIONS, MISSION SHOULD NOT FORCE ISSUE BUT SHOULD EXPRESS OUR DISAPPOINTMENT AND REPORT FULLY TO WASHINGTON. FYI. -- WE UNDERSTAND THAT SPANISH HAVE SHOWN RECENT DISPOSITION TO COMPROMISE; IF CANADIANS OBJECT, WE MAY WISH TO MAKE APPROPRIATE REPRESENTATIONS IN OTTAWA. END FYI.

5. CANADIANS HAVE A NUMBER OF OBJECTIONS TO DRAFT PRINCIPLES AND NOW APPEAR UNLIKELY TO AGREE TO THEM PRIOR TO MINISTERIAL. CANADIANS FEEL THAT PRINCIPLES DO NOT ADEQUATELY EXPRESS STATE RESPONSIBILITY TO PREVENT TRANSFRONTIER POLLUTION, AND MAY BELIEVE THAT PRINCIPLES ARE PREJUDICIAL TO CANADIAN POSITION IN DEALINGS WITH U.S. CANADIANS ALSO FEEL THAT PRINCIPLES SHOULD BE MORE UNCLASSIFIED

UNCLASSIFIED

PAGE 03 STATE 211503

EXPLICITLY LINKED TO STOCKHOLM DECLARATION AND TO DEVELOPMENT OF INTERNATIONAL LAW REGARDING STATE RESPONSIBILITY AND LIABILITY FOR TRANSFRONTIER POLLUTION. CANADIANS ARE ALSO DISTURBED WITH SPEED OF ENVIRONMENT COMMITTEE DELIBERATIONS ON PRINCIPLES, AND BELIEVE THAT ADDITIONAL TIME IS REQUIRED TO DEVELOP A SOUND AND ELEGANT DOCUMENT. WE BELIEVE, AND HAVE TOLD CANADIANS, THAT PRINCIPLES ALREADY PROTECT CANADIAN POSITION IN DEALINGS WITH U.S., AND THAT

FURTHER COMPROMISE ON AREAS OF PARTICULAR CANADIAN CONCERN WOULD BE LIKELY TO BE PREJUDICIAL TO U.S. ACCORDINGLY, IF CANADIANS OPPOSE ADOPTION OF PRINCIPLES IN PRESENT FORM PRIOR TO MINISTERIAL, U.S. IS NOT IN POSITION TO ACCEPT FURTHER COMPROMISE ON SUBSTANCE OF PRINCIPLES.

6. IF CANADIANS REFUSE TO AGREE TO PRINCIPLES, AND PROPOSE ALTERNATE ACTION PROPOSAL DEFERRING ACTION ON THEM, U.S. SHOULD EXPRESS DISAPPOINTMENT AT CANADIAN POSITION, AND EXPLORE CANADIANS' GROUNDS FOR OBJECTION. MISSION SHOULD NOTE THAT WE REGARD THE PRINCIPLES AS IMPORTANT; THAT ALL SIDES -- INCLUDING THE U.S. -- HAVE MADE COMPROMISES IN THEIR DEVELOPMENT; AND THAT DEFERRING DECISION ON PRINCIPLES WILL SACRIFICE MOMENTUM AND MAKE EVENTUAL AGREEMENT MUCH MORE DIFFICULT. MISSION SHOULD NOT AGREE TO CANADIAN SUBSTITUTE ACTION PROPOSAL, MISSION SHOULD CHARACTERIZE CANADIAN POSITION AS A SERIOUS DEVELOPMENT. FURTHER NOTING THAT MISSION WILL WISH TO REPORT BACK FULLY

TO WASHINGTON TO SEEK FURTHER INSTRUCTIONS. IF CANADIANS MAKE POINT THAT THEIR PROPOSAL IS BASED ON U.S. FALLBACK FOR SEPTEMBER 11-12 MEETING, MISSION SHOULD NOTE THAT FALLBACK WAS DEVELOPED PRIOR TO CONCLUSION OF THE COMMITTEE'S PRODUCTIVE DELIBERATIONS, AND THAT U.S. HAD NOT TABLED IT BECAUSE OF THE WIDESPREAD AGREEMENT REACHED WITHIN ENVIRONMENT COMMITTEE.

7. WE ARE HOPEFUL THAT SPAIN WILL HAVE MODERATED ITS POSITIONS SOMEWHAT, AND WE UNDERSTAND THAT SPANISH MAY HAVE INDICATED SOMEWHAT GREATER FLEXIBILITY. TO HELP ACHIEVE THIS OBJECTIVE, MISSION MAY WISH TO REITERATE TO SPANISH OUR HOPE THAT THEY WILL BE ABLE TO ACCEPT THE PRINCIPLES AGREED UPON BY THE VAST MAJORITY OF OTHER ENVIRONMENT UNCLASSIFIED

UNCLASSIFIED

PAGE 04 STATE 211503

COMMITTEE MEMBERS. IN EVENT SPANISH UNABLE TO AGREE, MISSION MAY ENCOURAGE SPANISH TO GIVE CONSIDERATION TO FOLLOWING ARGUMENTS.

8. REGARDING PRINCIPLES 5 AND 6 (EQUAL RIGHT OF HEARING), U.S. MAY MAKE POINT THAT EQUAL ACCESS BY FOREIGNERS TO DOMESTIC TRIBUNALS PROVIDES A USEFUL MECHANISM TO PREVENT TRANSFRONTIER POLLUTION INCIDENTS FROM EVER ARISING, OR FOR RESOLVING EXISTING DISPUTES AT THE PRIVATE LEVEL. FOR THIS REASON, ON REFLECTION U.S. BELIEVES THAT PRINCIPLES 5 AND 6 HAVE VALUE AND OUGHT TO BE RETAINED IN DECLARATION AS ONE OF THE MOST IMPORTANT POSSIBLE PROCEDURES FOR PREVENTING OR RESOLVING TRANSFRONTIER POLLUTION DISPUTES.

9. U.S. ALSO ATTACHES IMPORTANCE TO PRINCIPLES 8 AND 9

CONCERNING NOTIFICATION AND CONSULTATION. SPANISH POSITION HAS BEEN THAT ANY OBLIGATION TO CONSULT REGARDING TRANSFRONTIER POLLUTION SHOULD NOT ENABLE AN OBJECTING STATE TO DELAY A PROJECT IN ANOTHER STATE. ACCORDINGLY, SPANISH INSIST THAT THE PERIOD OF DURATION OF SUCH CONSULTATIONS BE MUTUALLY AGREED UPON IN ADVANCE (PRINCIPLE 8) AND THAT CONSULTATIONS NOT DELAY THE ACTING STATE (PRINCIPLE 9). THIS POSITION HAS BEEN REJECTED BY A NUMBER OF STATES AND IS NOT ACCEPTABLE TO THE U.S. ACCORDINGLY, YOU MAY WISH TO REMIND SPANISH OF U.S. COMPROMISE FORMULA WHICH AVOIDED SPECIFIC REFERENCE TO DURATION OF CONSULTATIONS THROUGH REFERENCE TO CONCEPT OF DILIGENT CONSULTATIONS. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, POLLUTION, COMMITTEE MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 25 SEP 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE211503
Document Source: CORE
Document Unique ID: 00
Drafter: JRCROOK:EDD
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740270-0736
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740914/aaaaalsb.tel
Line Count: 182
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: garlanwa
Review Comment: n/a
Review Content Flags:
Review Date: 17 JUL 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <17 JUL 2002 by maustmc>; APPROVED <16-Aug-2002 by garlanwa>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: ECD ACTION PROPOSAL CONCERNING TRANSFRONTIER POLLUTION
TAGS: SENV, XG, OECD
To: OECD PARIS
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005